# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

PAULA PHELPS	)
Claimant	)
VS.	)
	) Docket No. 231,97
VISUAL OPTIONS	)
Respondent	)
AND	)
	)
TRAVELERS INSURANCE COMPANY	)
Insurance Carrier	)

# ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on June 25, 1998.

### ISSUES

The ALJ denied claimant's request for authorized medical treatment and temporary total disability benefits on the basis that K.S.A. 44-508(f), the "going and coming" rule, precludes claimant from receiving benefits because (1) claimant fell in a parking lot not under the exclusive control of respondent and, therefore, was not on the premises of respondent; and, (2) because claimant had left the duties of her employment.

Claimant requests review of the finding that claimant did not sustain an injury arising out of and in the course of employment pursuant to K.S.A. 44-508(f).

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the ALJ should be affirmed.

The issue raised on appeal, whether claimant's injuries arose out of and in the course of her employment, is a jurisdictional issue subject to review by the Appeals Board.<sup>1</sup>

<sup>&</sup>lt;sup>1</sup> K.S.A. 1997 Supp. 44-534a; K.S.A. 1997 Supp. 44-551.

Claimant was employed by Visual Options as an optical manager. As claimant was leaving work on October 21, 1996, she activated the building's security system and exited out the front door. Claimant testified she walked out "just a couple of steps" and fell in the unlighted customer parking lot located in the front of the building owned by Grene Visual Group. Grene Visual was a separate legal entity. Claimant did not work for Grene Visual. Claimant's employer, Visual Options, did not own either the building or the parking lot where claimant fell.

The Board agrees with the conclusion by the ALJ. The claim is barred by provisions of K.S.A. 44-508(f) which exclude from coverage injury occurring "going and coming." None of the exceptions to that rule apply. The location where claimant fell was not her employer's premises. It was neither owned nor controlled by claimant's employer, Visual Options.<sup>2</sup> The location of the accident was not a place where respondent's employees would be while performing their duties for respondent. She left employment and was going home. Her job did not involve travel as an integral part. The route she was on was one used by the public to deal with her employer but the record discloses no special risk or hazard.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes on June 25, 1998, should be, and hereby is, affirmed.

# Dated this \_\_\_\_ day of September 1998. BOARD MEMBER

c: Darla J. Lilley, Wichita, KS
William L. Townsley III, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

<sup>&</sup>lt;sup>2</sup> Thompson v. Law Offices of Alan Joseph, 256 Kan. 36, 883 P.2d 768 (1994)